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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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Illinois Commerce Commission
RAIL SAFETY SECTION

COFFEEN AND WESTERN RAILROAD
COMPANY,

Petitioner

v.

MONTGOMERY COUNTY, ILLINOIS,

Respondent.

**Petition for an Order authorizing the
construction of at grade crossings in and
around Coffeen, Illinois.**

Docket No. T04-0084

INTERVENOR NORFOLK SOUTHERN RAILWAY COMPANY'S
RESPONSE TO COFFEEN AND WESTERN RAILROAD COMPANY'S
AMENDED PETITION

NOW COMES Intervenor Norfolk Southern Railway Company (hereinafter "Norfolk Southern"), and for its Response to Coffeen and Western Railroad Company's (hereinafter "CWRC") Amended Petition states as follows:

I. Authority to Construct and Operate the Proposed New Rail Line

Thus far, Petitioner CWRC refuses to clarify the obvious inconsistency between its position before the Commission in its Amended Petition and the underlying Surface Transportation Board ("STB") proceeding seeking authority to construct and operate the proposed new rail line - whether it is Petitioner CWRC or Ameren Energy Generating Company (hereinafter "AEGC") who is seeking STB authority to construct and operate the proposed new rail line.

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CWRC's Amended Petition alleges that "AEGC filed a petition on behalf of CWRC with the STB on February 5, 2004 for common carrier authority to construct and operate a new rail line." (See Par. 2 of Amended Petition) The Petition that AEGC filed with the STB on February 5, 2004, however, clearly indicates that it is AEGC that is seeking STB authority to construct the proposed new rail line, and not CWRC. Page 16 of that STB Petition states in pertinent part:

"AEGC proposes that the Board grant the requested exemption authority (construction authority) to AEGC subject to completion of the environmental review"

(A copy of the AEGC's Petition filed with the STB on February 5, 2004 is attached hereto as Exhibit A)

AEGC's Petition before the STB also clearly reveals that the construction authority being sought is not in furtherance of Petitioner's request for common carrier status, but rather is being sought specifically for "a shipper seeking to better itself by building out in order to gain access to additional carriers." (Emphasis added) (See page 13, Exhibit A)

Moreover, it is not evident from the record before the STB that Petitioner CWRC will ever obtain the authority from AEGC to operate the very rail line which AEGC is seeking authority to construct. First, we note that on Page 22 of AEGC's Petition before the STB, AEGC clearly states to the STB that AEGC has not determined that CWRC will *ever* operate the line:

"... Ameren will finance the construction of the line. At this time, we are still contemplating whether the railroad subsidiary [CWRC] will operate the line or whether Ameren will contract with another carrier to operate the line. We acknowledge that if another carrier operates the line, the railroad subsidiary will retain a residual common carrier obligation for the line. ..." (emphasis added) (See page 22, Exhibit A)

Further, in a separate proceeding before the STB, CWRC claimed that it was in the process of entering into a lease agreement with AEGC to operate the rail line that AEGC is proposing to construct (further evidence that it is AEGC, and not CWRC, that is seeking the necessary construction authority), and that this lease was expected to be signed by the end of April, 2004. (See CWRC's Petition before the STB dated April 15, 2004, attached hereto as Exhibit B) Not only did AEGC not support that claim, AEGC did not even appear in that STB proceeding. Further, there is no evidence in the record before the STB or otherwise that this lease between AEGC and CWRC was ever consummated as alleged by CWRC. (We note as well, that it was the purported lease that formed the basis of CWRC's claim to being a common carrier railroad.)

II. Construction of Proposed Rail Line

Petitioner CWRC has failed to allege in this docket or elsewhere that AEGC has acquired all of the property and property rights necessary for the construction and operations of the proposed rail line.

III. Crossing of Norfolk Southern's Mainline Track

Petitioner CWRC's Amended Petition alleges that the proposed new rail line will cross the mainline track of Norfolk Southern.

To Norfolk Southern's knowledge, neither Petitioner CWRC nor AEGC has obtained the requisite federal or State approval to cross Norfolk Southern's mainline track. Norfolk Southern has not consented to CWRC or AEGC constructing a rail line that crosses Norfolk Southern's tracks.

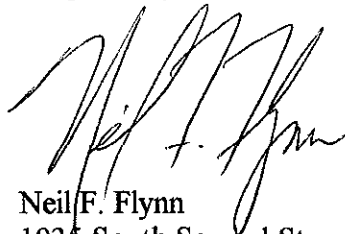
IV. No Authority to Construct the Proposed Rail Line

Neither Petitioner CWRC nor AEGC has obtained STB authority to construct the proposed line of rail which is currently the subject matter of this proceeding before the Illinois Commerce Commission in Docket T04-0084.

In short, in this Docket T04-0084, Petitioner CWRC is seeking Commission approval to construct and to install appropriate warning devices at eleven at-grade crossings for a line of rail that someone else seems to be constructing, for which no authority to construct exists, that crosses an existing rail line for which there is no authority to cross, on property that is not yet owned, and for which there is no clear right for CWRC to operate. Moreover, proceeding with this docket at this time will result in the unnecessary expenditure of public funds and other State and local governmental resources.

For the reasons set forth herein, Norfolk Southern maintains that the Amended Petition in this docket should be dismissed without prejudice.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Neil F. Flynn", is written over the typed name and address.

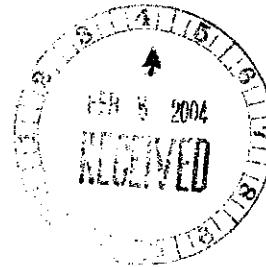
Neil F. Flynn
1035 South Second Street
P.O. Box 37
Springfield, IL 62705-0037
217-544-0261
217-544-0688 (fax)
nflynn@nfflynnlaw.com

Attorney for Norfolk Southern
Railway Company

Dated: April 6, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34435



FILED

FEB - 5 2004

210025

TRANSPORTATION BOARD

PETITION FOR AN EXEMPTION FROM 49 U.S.C. § 10901
TO CONSTRUCT AND OPERATE A RAIL LINE
BETWEEN COFFEEN AND WALSHVILLE, ILLINOIS

FILED

FEB - 5 2004

SURFACE
TRANSPORTATION BOARD

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Public Record

James A. Sobule
AMEREN SERVICES
P.O. Box 66149 (MC-1310)
St. Louis, Missouri 63166-6149
(314) 554-2276 (Telephone)
(314) 554-4014 (Facsimile)

John R. Molm
Sandra L. Brown
Rebecca Roback
TROUTMAN SANDERS LLP
401 Ninth Street, N.W., Suite 1000
Washington, D.C. 20004
(202) 274-2950 (Telephone)
(202) 274-2994 (Facsimile)

Attorneys for Ameren Corporation and
Ameren Energy Generating
Company.

February 5, 2004

EXHIBIT

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34435



**PETITION FOR AN EXEMPTION FROM 49 U.S.C. § 10901
TO CONSTRUCT AND OPERATE A RAIL LINE
COFFEEN AND WALSHVILLE, ILLINOIS**

COMES NOW Ameren Energy Generating Company,¹ on behalf of itself and its soon to be formed railroad subsidiary (hereinafter collectively referred to as "AEGC"), and hereby petitions the Surface Transportation Board (hereinafter the "Board" or "STB"), pursuant to 49 U.S.C. § 10502, for an exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct an approximately 13 mile rail line between Ameren's Coffeen Power Plant in the vicinity of Coffeen, Illinois to a connection with the Union Pacific Railroad ("UP") and a separate connection to the Burlington Northern Santa Fe Railway ("BNSF") both in the vicinity of Walshville, Illinois (hereinafter "Coffeen build-out"). AEGC acknowledges that the requested exemption from prior approval requirements of § 10901 does not amount to an exemption from the environmental review to be conducted under the National Environmental Policy Act ("NEPA") and the Board's regulations.² Therefore, in accordance with the Board's practice in

¹ AEGC is a wholly owned subsidiary of Ameren Corporation. Ameren Corporation and its subsidiaries and affiliates will be referred to as "Ameren" unless a more specific designation is useful or needed.

² Ameren Corporation, through another wholly owned subsidiary Ameren ERC, Inc., currently controls the Missouri Central Railroad Company ("MCRR"). See *Ameren Corporation – Control Exemption – Missouri Central Railroad Company*, STB Finance Docket No. 33805 (STB served Nov. 5, 1999). Through its current sixty percent (60%) ownership of Electric

construction cases, AEGC requests that the Board conditionally grant this petition as promptly as possible, and in any event within ninety (90) days, subject to the issuance of a final decision after the environmental review process *has been completed*.

STATEMENT OF FACTS

Ameren ships a combined total of approximately 32 million tons of coal per year to Ameren-owned facilities. Verified Statement of Robert K. Neff at 1, attached as Exhibit A (hereinafter "V.S. Neff"). The net generating capacity of the Ameren facilities is more than 14,500 megawatts. Ameren's electric generation facilities fall under three operating subsidiaries, including AmerenUE (a subsidiary which owns regulated generation), and two subsidiaries which own non-regulated generation – AEGC and Ameren Energy Resources Generating Company ("AERG"). V.S. Neff at 2. Overall Ameren provides energy services to 1.7 million electric customers. AEGC provides electric services in counties throughout a 20,000-square-mile area to more than 323,000 retail electricity customers. *Id.* Ameren also currently owns sixty percent (60%) of Electric Energy, Inc. ("EEI"), an exempt wholesale generator with 1087 megawatts of capacity, and which burns 5 million tons of coal per year.³ *Id.*

Energy, Inc., Ameren also controls the Joppa & Eastern Railroad ("JERR"). Ameren will seek authority to control JERR, MCRR and the new railroad in a subsequent filing prior to the railroad becoming a rail carrier. Ameren's control of JERR, MCRR and the new railroad will fall under the exemption from prior approval requirements found at 49 C.F.R. § 1180.2(d)(2).

³ On February 3, 2004, Ameren Corporation announced the signing of a definitive agreement to purchase the stock of Illinois Power Company ("IP") and a 20% interest in EEI from Dynegy, Inc. Closing of the acquisition, expected by year-end 2004, is subject to the approval of the Illinois Commerce Commission, the Securities and Exchange Commission, the Federal Energy Regulatory Commission, the Federal Communications Commission and the expiration of the waiting period under the Hart-Scott-Rodino Act. IP would become an Ameren subsidiary operating as AmerenIP with its headquarters remaining in Decatur, Ill. IP currently serves approximately 590,000 electric customers in Illinois. Following the acquisition, Ameren will own 80% of EEI, and more than 60% of Ameren's total customer base would reside in Illinois.

Another subsidiary of Ameren Corporation, Ameren Energy Fuels and Services ("AFS"), acts as the agent for the above-named operating companies in acquiring fuel and related transportation for their coal-fired power plants, including the Coffeen Power Plant. *Id.* Ameren Services, another wholly-owned subsidiary of Ameren Corporation provides support services to the corporation and its subsidiaries. AFS must constantly evaluate the fuel and transportation resources available for each plant in order to maximize the flexibility and competitiveness of each plant. *Id.*

Ameren's Coffeen Power Plant is owned by the AEGC subsidiary. The Coffeen Power Plant began operation in 1965 and consists of two boilers near the town of Coffeen, Illinois. V.S. Neff at 2. Coffeen is a 900 megawatt facility and at full capacity will burn approximately 450 tons of coal per hour to produce 6.7 million pounds of steam per hour. The plant typically receives approximately 2.5 million tons of coal annually. *Id.*

Electricity generation in the state of Illinois is deregulated. Therefore, power plants like Coffeen are no longer automatically guaranteed a return on their costs and they must be low-cost producers to compete. Keeping Coffeen competitive is essential to supplying low-cost electricity to Illinoisans and to ensuring the future viability of the plant. V.S. Neff at 3. Fuel costs, which include the price of coal and the price to transport the coal, are the single largest expense of operating a coal-fired power plant. When a power plant is captive to a single railroad, the fuel costs paid by that plant are higher than the fuel costs at plants with multiple transportation options. *Id.*

The Coffeen Power Plant currently receives most of its coal via the Norfolk Southern Railway ("NS") from the Monterey Mine near Macoupin, Illinois. V.S. Neff at 2. The coal travels south from the Monterey Mine toward St. Louis on NS and then north on NS to a NS connection with BNSF at Litchfield, Illinois. At Litchfield, NS runs over BNSF trackage rights to Sorento,

Illinois where NS picks up its own track again for the last 12 miles to the Coffeen Power Plant. *Id.*

The 12 mile NS track between Sorento and Coffeen is an island of NS track because NS has previously abandoned the other sections of track to the east and west of the island section. NS does not serve any other shippers on the island track. V.S. Neff at 2-3.

The coal mine currently supplying coal to Ameren has occasionally had difficulties providing the coal needed by Ameren; these difficulties have recurred during 2003. V.S. Neff at 3.

This issue, along with Ameren's overall desire to lower fuel costs by maximizing the fuel sourcing and transportation options at its plants, led to Ameren's investigation of rail service alternative options that would provide more flexibility, more reliable service and access to a broader range of coal mine origins to serve Coffeen. *Id.*

Ameren engaged an engineering firm to look at routes available to connect the Coffeen Power Plant to both the lines of UP and BNSF in order to maximize rail service options to the Coffeen Power Plant. *Id.* Ameren evaluated various routes, some of which are shown on the Map attached as Exhibit B. The most direct and desired route, which is the least intrusive to the local communities and environment, consists of constructing an approximately 13 mile line. This line starts at Coffeen and travels southwest and roughly parallel to the NS track for approximately one mile, crosses the NS line once,⁴ closely follows existing transmission lines until near the end of the line where two separate connections would be constructed to extend the new construction to UP and to BNSF, both near Walshville, Illinois. *Id.*; see also, "Route A" in Exhibit B.

A second possible route would require NS to voluntarily agree to sell, lease or otherwise allow Ameren the use of the existing 12 mile island track. Ameren would then construct a rail line

⁴ If the parties are unable to reach agreement on the rail crossing, Ameren will file a petition to cross NS's line pursuant to 49 U.S.C. § 10901(d).

from a point near the end of the NS's line at Sorento, Illinois north to the UP at a point east of Walshville. V.S. Neff at 4. The total length of this line would be five miles. See "Route B" in Exhibit B. On December 22, 2003, Ameren formally submitted a proposal to NS to purchase this line. NS is currently considering this offer, but, to date, has not made a determination. *Id.*

The new railroad subsidiary will be a Class III carrier. Ameren will finance the construction of the line. *Id.* The rail line will be operated as a common carrier rail line and other shippers may request service as applicable. At this time, Ameren is still contemplating whether the railroad subsidiary will operate the line or whether Ameren will contract with another carrier to operate the line. *Id.* Ameren acknowledges that if another carrier operates the line, the railroad subsidiary will retain a residual common carrier obligation for the line. *Id.* In addition, any necessary regulatory filings for the change in operations will be made at the appropriate time. *Id.*

Ameren has communicated with the Board's Section of Environmental Analysis ("SEA") about this project as required by the Board's regulations. Ameren has requested and SEA has approved the use of a third party consultant, pursuant to 49 CFR Part 1105, to work with SEA to prepare the necessary environmental documentation as required under the NEPA. As stated above, Ameren acknowledges that the grant of this exemption does not waive the NEPA review.

In conclusion, the Coffeen build-out is an essential project to ensure the maximum fuel flexibility and economically competitive status of the Coffeen Power Plant. As described above, this project will provide multiple transportation providers with more diversified coal sources. The Coffeen build-out will thus result in more and lower cost options for fuel, increase plant reliability and ultimately reduce the plant's total costs of operation. All of these factors are important to keep the Coffeen Power Plant competitive and viable in the future.

DISCUSSION

I. THE LEGAL STANDARDS UNDER 49 U.S.C. § 10502 FOR AN EXEMPTION FROM THE REQUIREMENTS OF 49 U.S.C. § 10901 FOR THE CONSTRUCTION AND OPERATION OF THIS RAIL LINE HAVE BEEN MET

Under 49 U.S.C. § 10901, construction and operation of a new railroad line requires prior Board approval. The Board is required, however, to exempt new rail line construction from regulation pursuant to 49 U.S.C. § 10502 if it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) the application of a provision of the Interstate Commerce Act is not needed to protect shippers from the abuse of market power.

The construction of this rail line is the type of transaction for which the exemption provision of the Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1897 (1980), was designed. The exemption provision was considered an important component of the legislation. *American Trucking Ass'n v. ICC.*, 656 F.2d 1115, 1119 (5th Cir. 1981). As President Carter stated upon signing the Staggers Act into law, the Act "strips away needless and costly regulations in favor of market forces, competitive market forces, whenever possible." 16 Weekly Comp. President Doc. 2225-26 (Oct. 14, 1980). The Fifth Circuit in *American Trucking* cited the affirmative use of § 10502 to exempt transactions, quoting from legislative history that "the Commission is charged with the responsibility of actively pursuing exemptions for transportation and service that comply with the section's standards." *American Trucking*, 656 F.2d at 1119. The Board was further charged by Congress with removing "as many as possible of the Commission's restrictions . . ." H.R. Rep. No. 96-1430, at 105 (1980). The Interstate Commerce Commission affirmed the policies enunciated by the Staggers Act by stating that "[i]t is our aim to eliminate the barriers to entry through new construction to the greatest extent possible to facilitate

investment initiatives and expand rail service.” *Class Exemption for Rail Construction Under 49 U.S.C. 10901*, Ex Parte No. 392 (Sub-No. 3), slip op. (ICC served May 29, 1987).

The Interstate Commerce Commission Termination Act of 1995 (“ICCTA”), Pub. L. No. 104-88, 109 Stat. 803 (1995), further liberalized the “public and convenience and necessity” standard imposed by § 10901 applicable to rail construction projects to its present form. Shortly after passage of the ICCTA, the Board noted in one of its first opinions that “[t]he creation of additional rail service and additional competition via rail line construction benefits the public.” *Class Exemption for the Construction of Connecting Tracks Under 49 U.S.C. § 10901*, 1 S.T.B. 75, 79 (1996). Similarly, in an opinion approving a petition for exemption to construct a new rail line by the Burlington Northern and Santa Fe Railway Company, the Board set forth its standards governing new rail construction by stating that:

in enacting the ICC Termination Act of 1995 . . . Congress intended to facilitate rail construction by changing the statutory standard from requiring approval if the agency finds that a project is consistent with the public convenience and necessity (PC&N) to requiring approval unless the agency finds the project is inconsistent with the PC&N. Under this new standard, proposed rail construction projects are to be given the benefit of the doubt. (citations omitted).

The Burlington Northern and Santa Fe Railway Company – Construction and Operation Exemption – Seadrift and Kamey, TX, Finance Docket No. 34003, slip op. at 5 (STB served June 19, 2001) (emphasis added); *see also, Norfolk Southern Corp. and Norfolk Southern Ry. Co. - Construction and Exemption - Indiana County, PA*, Finance Docket No. 33928, slip. op. at 6 (STB served May 16, 2003). This augments a 1996 decision by the Board discussing the § 10901 railroad construction standard, where the STB held that as a result of the ICCTA, “there is now a presumption that construction projects will be approved.” *Class Exemption for the Construction of Connecting Tracks Under 49 U.S.C. § 10901*, 1 S.T.B. 75, 79 (1996) (emphasis added); *see also Dakota, Minnesota &*

Eastern R.R. Construction into the Powder River Basin, Finance Docket No. 33407, slip op. at 17 (STB served Dec. 10, 1998) (“[P]roposed rail construction projects are to be given the benefit of the doubt.”).

In addition, the former Chairman of the STB summarized the Board’s position on new rail construction in testimony before Congress, noting that “construction applications are to be approved unless they are inconsistent with the public interest. To give full effect to Congressional intent, the Board has stated that rail constructions are to be given the benefit of the doubt, and that there is now a presumption that rail construction projects will be approved.” *Obstacles to Rail Infrastructure Improvements: Hearing Before the House Subcomm. on Railroads, House Comm. on Transp. and Infrastructure*, 107th Cong. (2001) (statement of Linda J. Morgan, Chairman, Surface Transportation Board).

Further, the current Surface Transportation Board Chairman, Roger Nober, has recently stated before Congress that “construction projects represent the best way to balance the need for greater competition with the importance of preserving the private rail network.” *Railroad Shipper Issues and S.919, the Railroad Competition Act of 2003: Hearing Before the U.S. Senate Subcomm. on Surface Transp. and Merchant Marine, Senate Comm. on Commerce, Science, & Transportation*, 108th Cong. (2003) (statement of Roger Nober, Chairman, Surface Transportation Board). In testimony before the House, Chairman Nober also noted “the Board is statutorily required to approval all construction of new rail lines.” *See National Rail Infrastructure Financing Proposals: Hearing Before the Subcomm. on Railroads, House Comm. on Transp. and Infrastructure*, 108th Cong. (2003) (statement of Roger Nober, Chairman, Surface Transportation Board).

A. **Exemption of This Rail Line Construction Project Will Promote The National Rail Transportation Policy**

Regulation of the construction and operation of this approximately 13 mile rail line is not necessary to carry out the rail transportation policy expressed in 49 U.S.C. § 10101. To the contrary, granting an exemption instead of requiring such burdensome regulation will promote the national rail transportation policy set forth in § 10101. Specifically, the transportation policies that will be promoted by the issuance of a construction exemption are as follows:

- To allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail [§ 10101(1)];⁵
- To minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required [§10101(2)];⁶
- To ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers to meet the needs of the public [§ 10101(4)];⁷
- To foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes [§ 10101(5)];⁸
- To reduce regulatory barriers to entry into the industry [§ 10101(7)];⁹ and
- To provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part [§ 10101(15)].

First, the construction and operation of the rail line will foster competition between rail and other modes of transportation [§ 10101(5)], ensure the development of a sound rail

⁵ See *Alameda Corridor Construction Application*, Finance Docket No. 32830, 1996 WL 242571, at *6 (STB served May 13, 1996).

⁶ See *Southern Electric R.R. – Construction and Operation Exemption – West Jefferson, AL*, Finance Docket No. 33387, slip op. at 2-3 (STB served July 16, 1997).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

transportation system [§ 10101(4)], and allow competition and the demand for service to establish reasonable rates for transportation by rail [§ 10101(1)]. Authorizing the construction of the Coffeen build-out will bring more competition, better service and lower fuel costs to AEGC. After completion, Coffeen Power Plant will have gained direct access to two additional carriers and thereby receive more and lower cost options for fuel, increased plant reliability and a reduction of the plant's total costs of operation.

Second, by granting an exemption for this construction project, the Board will minimize the need for federal regulatory control over the rail transportation system [§10101(2)] and reduce the regulatory barriers to entry into the rail industry [§10101(7)]. As the ICC has noted, "[i]t is our aim to eliminate barriers to entry through new construction to the greatest extent possible to facilitate investment initiatives and expanded rail service." *Class Exemption for Rail Construction Under 49 U.S.C. 10901*, Ex Parte No. 392 (Sub-No. 3), slip op. (ICC served May 29, 1987), *renoticed in Class Exemption for the Construction of Connecting Track Under 49 U.S.C. 10901*, Ex Parte No. 392 (Sub-No. 2) and *Class Exemption for Rail Construction Under 49 U.S.C. 10901*, Ex Parte No. 392 (Sub-No. 3), slip op. (ICC served Sept. 15, 1992); *see also Gateway Western Ry. Co. – Construction Exemption – St. Clair County, IL*, slip op. at 4-5 (ICC served May 11, 1993) (noting that the Board has "made findings in a series of construction [exemption] cases that the rail transportation policy favors the construction of new lines."); *Burlington Northern R.R. – Construction and Operation Exemption – Macon and Randolph Counties, MO*, 9 I.C.C. 2d 1161, 1166-1169 (1993), *aff'd sub nom. Missouri Mining, Inc. v. ICC*, 33 F.3d 980 (8th Cir. 1994). In addition, the Board's predecessor has stated that the potential for new entry occasionally may increase the bargaining power of (1) shippers that might otherwise be captive, and (2) carriers seeking to provide service through "competitive access" to a shipper

not located directly on their lines. *Class Exemption for Rail Construction Under 49 U.S.C. 10901*, Ex Parte No. 392 (Sub-No. 3), slip op. (ICC served May 29, 1987), *renoticed in Class Exemption for the Construction of Connecting Track Under 49 U.S.C. 10901*, Ex Parte No. 392 (Sub-No. 2) and *Class Exemption for Rail Construction Under 49 U.S.C. 10901*, Ex Parte No. 392 (Sub-No. 3), slip op. (ICC served Sept. 15, 1992).

Construction of the proposed rail line is precisely the kind of project the Board had in mind when it encouraged new entrants into the marketplace and emphasized less regulatory control over actions that would facilitate investment initiatives and expand rail service. In addition, granting an exemption for the construction proposed herein will create a benefit seemingly intended to be created by the ICC, *i.e.* a shipper seeking to better itself by building-out in order to gain access to additional carriers. *See Public Service Company of Colorado – Construction Exemption – Pueblo County, CO*, STB Finance Docket No. 33862 (STB served Aug. 23, 2000) and *Midwest Generation, LLC–Exemption From 49 U.S.C. 10901– For Construction In Will County, IL*, Finance Docket No. 34060 (STB served March 21, 2002). Granting an exemption in this case would further the principles that form the backbone of the Board's ideology and the national rail transportation policy. Accordingly, the Board should grant this exemption which will increase the bargaining power of an otherwise captive shipper and provide alternative rail service for the Coffeen Power Plant.

In summary, to require approval for this project by means other than exemption would actually be inconsistent with the National Rail Transportation Policy as articulated in § 10101. Failure to grant the exemption petition and issue a conditional decision subject to the environmental review will contravene the principles upon which the Staggers Act was established by inhibiting the development of a sound national transportation system, by deterring

competition via rail construction, and by not giving rail construction the benefit of the doubt. Accordingly, failure to grant this exemption is contrary to the Congressional intention and the established principles of the Board.

B. The Transaction to be Exempted is Limited in Scope

To satisfy the second test for an exemption, the Board must find that either: (1) the transaction is of limited scope or (2) regulation is not needed to protect shippers from the abuse of market power. The transaction proposed herein is the construction of a rail line approximately 13 miles in length all within Montgomery County, Illinois.¹⁰ Under Board precedent applying § 10502(a) in similar circumstances, these facts show the transaction to be of limited scope. See *Burlington Northern R.R. – Construction and Operation Exemption – Macon and Randolph Counties, MO*, 9 I.C.C.2d 1161, 1166-1169 (1993) (17 miles), *aff'd sub. nom. Missouri Mining, Inc. v. ICC*, 33 F.2d 980 (8th Cir. 1994) and *Entergy Arkansas And Entergy Rail—Construction And Operation Exemption--White Bluff To Pine Bluff, AR*, Finance Docket No. 33782 (STB served May 4, 2000) (12 miles).

Additionally, as shown on the map, attached as Exhibit B, the proposed rail line is to be located within a fairly limited and defined geographic region of Illinois within Montgomery County, Illinois. As a result of the limited construction area, there appears to be only minimal environmental impacts resulting from construction of the rail line. Accordingly, AEGC respectfully submits that these facts support a finding that the proposed construction is limited in scope.

¹⁰ Route B would also pass through a small portion of Bond County, Illinois.

C. Regulation is Not Needed to Protect Shippers from the Abuse of Market Power

Because the transaction is limited in scope, the Board is not required to make a finding that regulation is not necessary in order to protect shippers from the abuse of market power. In the unlikely event that the Board does not find that the transaction is limited in scope, however, the Board must find that regulation is not needed to protect shippers from the abuse of market power. The construction of this build-out obviates the need for regulation to protect shippers from the abuse of market power. The proposed line, when completed, will provide Ameren, a shipper, with increased rail transportation options and will thus facilitate shippers in protecting themselves from market power abuses. See *Southern Electric Railroad Co. - Construction and Exemption - Finance Docket No. 33387* (STB served July 16, 1997); *Midwest Generation, LLC - Exemption From 49 U.S.C. 10901 - For Construction In Will County, IL*, Finance Docket No. 34060 (STB served March 21, 2002); see also *San Jacinto Rail Limited Construction Exemption and The Burlington Northern and Santa Fe Ry. Co. Operation Exemption - Houston, Harris County, TX*, Finance Docket No. 34079 (STB served August 28, 2002).

In sum, regulation of the construction of the proposed rail line is unnecessary to protect shippers from the abuse of market power, since market power results from the lack of competition and the project proposed here is designed to increase competition. The test of abuse of market power was included in § 10502 in order to assess whether deregulation could result in harm to shippers who lack competitive alternatives. In this case, construction of the proposed rail line will not harm shippers since the proposed construction will enhance competition of service and rates for transportation and ensure reliable delivery of coal to Ameren by actually increasing the Coffeen Power Plant's rail alternatives.

II. THE BOARD SHOULD CONDITIONALLY GRANT THE REQUESTED EXEMPTION, SUBJECT TO THE COMPLETION OF THE BOARD'S ENVIRONMENTAL REVIEW PROCESS

AEGC proposes that the Board grant the requested exemption authority to AEGC subject to completion of the environmental review. AEGC acknowledges the requirements set forth in 49 C.F.R. § 1105 for the Board to undertake an independent environmental evaluation in connection with the construction exemption. AEGC has initially consulted with the Board's Section on Environmental Analysis with respect to the proposed environmental analysis to be prepared by the third-party consultant. The environmental review will be completed as soon as feasible.

AEGC submits that the issuance of the construction exemption at this time, with the effective date to coincide with the completion of the Board's environmental review, is in accord with the law. *See Illinois Commerce Comm'n v. ICC*, 848 F.2d 1246 (D.C. Cir. 1988), *cert. denied*, 488 U.S. 1004 (1989); *Chicago and North Western Transp. Co. -- Construction and Operation Exemption-- City of Superior, Douglas County, WI*, Finance Docket No. 32433, slip op. (ICC served May 11, 1994); *Burlington Northern R.R. -- Construction and Operation Exemption -- Macon and Randolph Counties, MO*, 9 I.C.C.2d 1161 (1993); *Southern Gulf Rwy. Co. -- Construction Exemption -- In Calcasieu Parish, LA*, Finance Docket 32321, slip op. (ICC served Sept. 9, 1993); *Aroostook Valley R.R.--Construction Exemption--Aroostook, County, ME*, Finance Docket No. 32030, slip op. (ICC served April 28, 1992); *Sioux & Western R.R.-- Construction Exemption--Charles County, MO*, Finance Docket No. 32016, slip op. (ICC served March 25, 1992); *Joppa and Eastern R.R. - Construction Exemption - Joppa, IL*, Finance Docket No. 31656, slip op. (ICC served July 5, 1990); *Southern Electric Generating Co. -- Petition for Exemption -- Construction of a Rail Line in Shelby County, AL*, Finance Docket No. 31498, slip

op. (ICC served Sept. 19, 1989); *Louisville & Jefferson Riverport Auth. and CSX Transp., Inc.* -- *In Jefferson City, KY*, Finance Docket No. 31136, slip op. (ICC served Dec. 22, 1987); and *Midwest Generation, LLC--Exemption From 49 U.S.C. 10901-- For Construction In Will County, IL*, Finance Docket No. 34060 (STB served March 21, 2002).

III. REQUEST FOR EXPEDITIOUS HANDLING AND FOR ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Ameren respectfully requests that the Board handle this proceeding as expeditiously as possible. The sooner the Board gives final approval to this project, the sooner Ameren and its customers can share in the benefits from multiple transportation options, including lower plant fuel costs. Further, the expedited handling of this proceeding will permit Ameren to be in the best position possible to negotiate vital coal and transportation contracts for the Coffeen Power Plant.

In addition, Ameren respectfully requests that the Board, in granting the requested exemption, revoke the exemption to the extent necessary to issue a certificate of public convenience and necessity (PC&N). As mentioned in footnote 3, Ameren may need to seek crossing authority under § 10901(d) which requires a certificate of PC&N. Furthermore, a certificate of PC&N may be needed for state condemnation proceedings, if necessary. In similar cases the Board has summarily issued a PC&N certificate, sometimes on its own initiative, and deemed it to be a "ministerial act." See *Louisville & Jefferson County Riverport Authority and CSX Transportation, Inc. -- Construction and Operation Exemption -- In Jefferson County, KY*, 4 I.C.C.2d 749 (1988) and *Midwest Generation, LLC--Exemption From 49 U.S.C. 10901-- For Construction In Will County, IL*, Finance Docket No. 34060 (STB served March 21, 2002). Therefore, in line with the Board's past decisions, AEGC requests that the Board summarily issue a certificate under

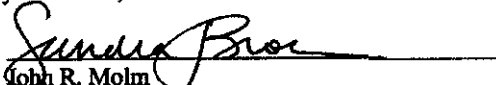
§ 10901 in this exemption proceeding so that there is no question regarding the ability to invoke 49 U.S.C. § 10901(d) to cross another rail carrier. *See id.*

CONCLUSION

For the foregoing reasons, AEGC respectfully requests the Board to issue the construction exemption for the proposed rail line herein described with the effective date to coincide with the completion by the Board of its environmental review. AEGC requests that the Board summarily issue a certificate of PC&N consistent with past construction exemptions. AEGC also requests that the Board expeditiously issue its final decision granting approval for this project upon completion of the environmental review.

Respectfully submitted,

James A. Sobule
AMEREN SERVICES
P.O. Box 66149 (MC-1310)
St. Louis, Missouri 63166-6149
(314) 554-2276 (Telephone)
(314) 554-4014 (Facsimile)


John R. Molm
Sandra L. Brown
Rebecca Roback
TROUTMAN SANDERS LLP
401 Ninth Street, N.W., Suite 1000
Washington, D.C. 20004
(202) 274-2950 (Telephone)
(202) 274-2994 (Facsimile)

Attorneys for Ameren Corporation and
Ameren Energy Generating Company

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

Petition For An Exemption From)
49 U.S.C. § 10901 To Construct And)
And Operate A Rail Line Between) Finance Docket No. 34435
Coffeen and Walshville, Illinois)

VERIFIED STATEMENT OF ROBERT K. NEFF

My name is Robert K. Neff. I am the Manager, Coal Supply and Transportation for Ameren Energy Fuels and Services Company ("AFS"), an affiliate of Ameren Corporation and AEGC. My business address is 1901 Chouteau Avenue, St. Louis, Missouri 63103. I have worked in my present position for four years. Overall, I have been in the fuel transportation area with the Ameren family of companies for over 15 years. I am also the President of Missouri Central Railroad, an Ameren owned railroad. See *Ameren Corp. – Control Exemption – Missouri Cent. R.R.*, F.D. 33805, slip op. (STB served Nov. 5, 1999).

My responsibilities as Manager of Coal Supply and Transportation include the acquisition of coal and related transportation for all the electric utility operating subsidiaries of Ameren Corporation. The purpose of this Verified Statement is to provide the Surface Transportation Board with facts supporting a request for authority to construct and operate a rail line connecting the Coffeen Power Plant to rail lines of the Union Pacific Railroad ("UP") and the Burlington Northern Santa Fe Railway ("BNSF") between Coffeen and Walshville, Illinois.

All of Ameren's facilities combined ship approximately 32 million tons of coal per year. Ameren companies' net generating capacity is more than 14,500 megawatts. Ameren is also

among the nation's top utility companies in size and sales. Ameren's electric generation facilities fall under three operating subsidiaries, including one subsidiary which is regulated generation – AmerenUE -- and two non-regulated generation subsidiaries – Ameren Energy Generating Company ("AEGC"), and Ameren Energy Resources Generating Company ("AERG"). AFS is a wholly-owned subsidiary of Ameren Corporation and acts as the agent for the above-named operating companies in acquiring fuel and related transportation for their coal-fired power plants, including the Coffeen Power Plant. Ameren Services, another wholly-owned subsidiary of Ameren Corporation provides support services to the corporation and its subsidiaries. Ameren also owns sixty percent (60%) of Electric Energy, Inc., an exempt wholesale generator with 1087 megawatts of capacity, and which burns 5 million tons of coal per year.

Ameren provides energy services to 1.7 million electric customers. The Coffeen Power Plant is owned by the AEGC. AEGC provides electric services to counties throughout a 20,000-square-mile area to more than 323,000 retail electricity customers. The Coffeen Power Plant began operation in 1965 and consists of two boilers. Coffeen is a 900 megawatt facility and at full capacity will burn approximately 450 tons of coal per hour to produce 6.7 million pounds of steam per hour. The plant typically receives approximately 2.5 million tons of coal annually.

The Coffeen Power Plant currently receives most of its coal via the Norfolk Southern Railway ("NS") from the Monterey Mine near Macoupin, Illinois. The coal travels south from the Monterey Mine toward St. Louis on NS and then north on NS to a NS connection with BNSF at Litchfield, Illinois. At Litchfield, NS runs over BNSF trackage rights to Sorento, Illinois where NS picks up its own track again for the last 12 miles to the Coffeen Power Plant. The 12 mile NS track

between Sorento and Coffeen is an island of NS track because NS has previously abandoned the other sections of track to the east and west of the island section. NS does not serve any other shippers on the island track.

Since electricity generation in the state of Illinois is deregulated, power plants like Coffeen are no longer automatically guaranteed a return on their costs and they must be low-cost producers to compete. Keeping Coffeen competitive is essential to supplying low-cost electricity to Illinoisans and to ensure the future viability of the plant. Fuel costs, which include the price of coal and the price to transport the coal, are the single largest expense of operating a coal-fired power plant. When a power plant is captive to a single railroad, the fuel costs paid by that plant are higher than the fuel costs at plants with multiple transportation options.

The coal mine currently supplying coal to Coffeen has occasionally had difficulties providing the coal needed by Coffeen, and these problems have recently re-occurred. Thus, we began investigating rail service alternative options that would provide more flexibility, more reliable service and access to a broader range of coal mine origins to serve Coffeen. We concluded that a rail build-out was necessary to ensure flexibility and reliable coal deliveries needed for the Coffeen Power Plant.

We engaged an engineering firm to look at routes available to connect the Coffeen Power Plant to both the lines of UP and BNSF in order to maximize rail service options at the Coffeen Power Plant. We evaluated various routes. The most desirable route and least intrusive to the local communities and environment consists of constructing a line starting at Coffeen and traveling southwest and roughly parallel to the NS track for approximately one mile, crossing the NS line once, closely follows existing transmission lines until near the end of the line where two separate

connections would be constructed to extend the new construction to UP and to BNSF, both near Walshville, Illinois. *See "Route A" in Exhibit B.*

A second possible route would require NS to voluntarily agree to sell, lease or otherwise allow Ameren the use of the existing 12 mile island track. Ameren would then construct a rail line from a point near the end of the NS's line at Sorento, Illinois north to the UP at a point east of Walshville. The total length of this line would be five miles. *See "Route B" in Exhibit B.* I met with NS and formally submitted a proposal to purchase this line from NS on December 22, 2003. NS is currently considering this offer, but has not as of yet made a decision.

The new railroad will be a Class III carrier. The line will be operated as a common carrier rail line and other shippers may request service as applicable. Ameren will finance the construction of the line. At this time, we are still contemplating whether the railroad subsidiary will operate the line or whether Ameren will contract with another carrier to operate the line. We acknowledge that if another carrier operates the line, the railroad subsidiary will retain a residual common carrier obligation for the line. In addition, any necessary regulatory filings for the change in operations will be made at the appropriate time.

In conclusion, the Coffeen build-out is an essential project to ensuring the maximum flexibility for the future of the Coffeen Power Plant. As described above, this project will provide more and lower cost options for fuel, increase plant reliability and reduce the total plant costs. All of these factors are important to keep the Coffeen Power Plant competitive and viable in the future.

Verified Statement of Robert K. Neff
STB Finance Docket No. 34435

I, Robert K. Neff, verify under penalty of perjury that the foregoing is true and correct based on my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this verified statement.

Robert K. Neff
Robert K. Neff

Dated: 2/2/04

